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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

FILE:

Office: TEXAS SERVICE CENTER

Date: MAY 26 2004

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the District Director, El Paso, Texas, reopened and denied again by the Director, Southern Regional Processing Facility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The directors denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the requisite group 2 twelve-month statutory period ending May 1, 1986.

The applicant did not respond to the district director's decision.

Whenever an application for special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within **30 days** following service of the notification of decision. 8 C.F.R. § 103.3(a)(3)(i). An appeal received after the thirty (30) day period has tolled will not be accepted for processing. 8 C.F.R. § 103.3(a)(3)(iv). Form I-694, Notice of Appeal, shall be used to file the appeal and must be accompanied by the appropriate fee. 8 C.F.R. § 103.3(a)(3)(ii). Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The facility director issued his Notice of Denial on October 15, 1991, and sent it to the applicant via certified mail. There is no evidence in the record to indicate that the director's notice was returned by the Postal Service as undeliverable or that the applicant failed to receive the notice, which was mailed to the applicant's most current address of record at the time the decision was issued. The applicant's appeal to the director's decision was not received until November 20, 1991. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected.